

Proposal and shall have delivered a copy of the Merger Proposal, or otherwise disclosed the material terms of the Merger Proposal, to Purchaser.

Section 6.15. Resale Registration Statement.

As soon as practicable after the date of this Agreement, Purchaser shall file with the SEC and shall use its Best Efforts to have cleared by the SEC, the Resale Registration Statement to register under the Securities Act the shares of Purchaser Common Stock to be issued in the Merger for resale by the Tax-Exempt Entities after the Closing. CareFirst will provide all information, financial and otherwise, concerning CareFirst as may be needed in the Resale Registration Statement. Purchaser and CareFirst shall use their Best Efforts to comply, prior to the Effective Time, with all applicable requirements of federal and state securities laws in connection with the Merger and the issuance of Purchaser Common Stock in connection therewith. In addition, Purchaser shall promptly file all appropriate applications with the NYSE to have the Purchaser Common Stock approved for listing on the NYSE upon notice of issuance.

Section 6.16. Accountant's Letter.

Upon reasonable notice, CareFirst shall use its Best Efforts to cause its independent public accountants to deliver to Purchaser a letter dated within two (2) business days prior to the effective time of the Resale Registration Statement, covering such matters reasonably requested by Purchaser as are customarily addressed in accountants' "comfort" letters.

Section 6.17. Transaction Objectives.

After the Closing, CareFirst and the Purchaser shall use their respective Best Efforts to achieve the following objectives:

- (i) create an enterprise that reflects and takes advantage of the proportionate strengths, contributions, resources and prospects of each of the parties in a logical, progressive step consistent with sound business practice;
- (ii) enhance the offering of competitive Blue Cross Blue Shield and other related health care products for Delaware, the District of Columbia, Maryland, Virginia and any other jurisdiction which may come under CareFirst's control pursuant to Section [6.13(b)] herein;
- (iii) provide to a significant portion of the workforce of the CareFirst Companies continued employment within each Company's current service area, as well as opportunities for employment with other of the parties within the entire area serviced by the parties, collectively;
- (iv) create a collective enterprise which will provide additional financial strength for the customers of each of the parties, will allow each of the

parties access to necessary capital to support strategic initiatives and will position the collective enterprise as a more significant regional competitor;

- (v) allow the Primary CareFirst Companies to continue as separate corporations subject to local regulation and with a significant level of local operational control;
- (vi) create an organizational structure for the Primary CareFirst Insurers that retain key employees of each; and
- (vii) cause, allow and assist the Primary CareFirst Insurers to continue to maintain a significant presence within their respective jurisdictions, including the operation of facilities located in each jurisdiction, the maintenance of the corporate headquarters of each within their respective jurisdictions and the provision of products and services to residents in their respective jurisdictions.

Section 6.18. Employee Benefits

[To be discussed.]

ARTICLE VII

Conditions

Section 7.1. Conditions to Each Party's Obligations.

The respective obligation of each party to effect the Merger and the other transactions to be effected contemporaneous with or as a result of the Merger shall be subject to the fulfillment at or prior to the Effective Time of the following conditions:

(a) ***Conversion.*** The Conversion shall have occurred substantially on the terms set forth on Appendix A.

(b) ***Stockholder Approval.*** If required, this Agreement and the Merger shall have been approved at or prior to the Effective Time by the requisite vote of the stockholders of Purchaser in accordance with generally applicable law and the Certificate of Incorporation and Bylaws of Purchaser.

(c) ***No Injunction.*** No order, statute, rule, regulation, executive order, stay, decree, judgment or injunction shall have been enacted, entered, promulgated or enforced by any court or governmental authority which prohibits or prevents the consummation of the transactions contemplated hereby and which has not been stayed or vacated by the Effective Time. Each of CareFirst, CFAC, and Purchaser shall use its Best Efforts and shall cooperate with each other to

have any such order, statute, rule, regulation, executive order, stay, decree, judgment or injunction vacated, lifted or stayed.

(d) **HSR Act.** Any waiting period applicable to the Merger under the HSR Act shall have expired or earlier termination thereof shall have been granted.

(e) **NYSE Listing.** The Purchaser Common Stock issuable in the Merger shall have been approved for listing on the NYSE upon notice of issuance.

(f) **Consent of State Regulators.** All consents of the Maryland Administration, the D.C. Superintendent, the Delaware Commission and any other appropriate state regulatory bodies that are required to consummate the transactions contemplated hereby shall have been obtained pursuant to orders which by their respective terms do not impose any Materially Burdensome Condition, and such orders shall be in full force and effect.

(g) **Approval of the Blue Cross Blue Shield Association.** Any required approval of the BCBSA shall have been obtained.

(h) **Approval by Tax-Exempt Entities.** The Merger shall have been approved by the Tax-Exempt Entities in their capacity as stockholders of CareFirst.

[(i) **Receipt of Private Letter Ruling.** CareFirst shall have received the Private Letter Ruling, which shall be favorable in all material respects.]

(j) **No Litigation.** There shall not be pending any suit, litigation or other similar proceeding relating to the Conversion or to the other transactions contemplated by this Agreement and as to which it is likely that there will be a material liability to the Purchaser Companies or the CareFirst Companies, each taken as a whole, (a "Material Case"); [provided, however, that the term "Material Case" shall not include any pending appeal of any regulatory approval or order approving the Conversion which appeal relates solely to whether the Conversion and other transactions contemplated by this Agreement should have been approved and does not seek damages or seek to alter the terms of such transactions]; provided further, however, that in the event CareFirst or Purchaser notifies the other that it considers a matter to be a Material Case, CareFirst and Purchaser agree that either may refer the matter to an independent arbitrator mutually acceptable to the parties (the "Independent Arbitrator") for a determination of whether the matter is a Material Case. The Independent Arbitrator shall hold a hearing (which shall be held pursuant to such rules and procedures as the parties may agree upon or shall be established by the Independent Arbitrator) and render a decision, which shall be final and binding upon the parties, within ten days following either party's request. Each party shall be entitled to submit a written brief or statement of position to the Independent Arbitrator (with a copy being simultaneously provided to the other party) prior to the hearing. The costs and expenses of the Independent Arbitrator shall be borne equally by Purchaser and CareFirst.

Section 7.2. Conditions to Obligations of CareFirst.

The obligation of CareFirst to effect the Merger shall be subject to the fulfillment at or prior to the Effective Time of the following additional conditions, any one or more of which may be waived in writing by CareFirst:

(a) **Obligations Performed.** Purchaser and CFAC shall have performed and complied with in all material respects their obligations, agreements and covenants under this Agreement which are required to be performed or complied with by them at or prior to the Effective Time.

(b) **Representations and Warranties True at Closing Date.** As of the Effective Time, the representations and warranties contained in Article V shall be true and correct in all respects as if made on and as of the Closing Date (except in each case for (i) such changes that are caused by Purchaser's compliance with the terms of this Agreement, and (ii) representations and warranties that address matters only as of a date or with respect to the period of time specified therein); provided, however, that with respect to the representations and warranties other than those already qualified by Purchaser Material Adverse Effect, such representations and warranties shall be deemed true and correct unless the failure of such representations and warranties to be true and correct, in the aggregate, would result in a Purchaser Material Adverse Effect.

(c) **Certificate Delivered.** Purchaser and CFAC shall have delivered to CareFirst a certificate executed on their behalf by their respective Presidents or other authorized executive officer in its corporate capacity to the effect that the conditions set forth in subsections 7.2(a) and 7.2(b) have been satisfied.

(d) **Articles of Merger.** CFAC shall have executed and delivered the Articles of Merger in accordance with Section 2.2 hereof.

(e) **Appointment of CareFirst Director.** Purchaser shall have taken all action necessary to appoint to the Board of Directors of Purchaser the person selected pursuant to Section 6.13.

(f) **Effective Resale Registration Statement.** The Resale Registration Statement shall have been declared effective by the SEC and no stop order suspending the effectiveness of the Resale Registration Statement shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the SEC.

(g) **No Material Adverse Effect.** There shall have not occurred an event that has a material adverse effect on the ability of the Purchaser to consummate the transactions contemplated hereby and otherwise to perform its obligations contemplated hereby (including scheduled payments of interest and principal on the Subordinated Notes). Further, the Purchaser Common Stock shall not have an average closing price of less than \$[] per share for any 20 consecutive trading days at any time prior to the Closing.

Section 7.3. Conditions to Obligations of Purchaser and CFAC.

The obligation of Purchaser and CFAC to effect the Merger shall be subject to the fulfillment at or prior to the Effective Time of the following additional conditions, any one or more of which may be waived in writing by Purchaser:

(a) ***Obligations Performed.*** CareFirst shall have performed and complied with in all material respects its obligations, agreements and covenants under this Agreement which are required to be performed or complied with by it at or prior to the Effective Time.

(b) ***Representations and Warranties True at Closing Date.*** As of the Effective Time, the representations and warranties contained in Article IV shall be true and correct in all respects as if made on and as of the Closing Date (except in each case for (i) such changes that are caused by CareFirst's compliance with the terms of this Agreement, and (ii) representations and warranties that address matters only as of a date or with respect to the period of time specified therein); provided, however, that with respect to the representations and warranties other than those already qualified by CareFirst Material Adverse Effect, such representations and warranties shall be deemed to be true and correct unless the failure of such representations and warranties to be true and correct, in the aggregate, would result in a CareFirst Material Adverse Effect; and provided further, that no representation or warranty contained in Section 4.11 shall be violated by reason of the expiration of any CareFirst Material Contract in accordance with its terms.

(c) ***Certificate Delivered.*** CareFirst shall have delivered to Purchaser a certificate executed on its behalf by its President or another authorized executive officer in its corporate capacity to the effect that the conditions set forth in subsections 7.3(a) and 7.3(b) have been satisfied.

(d) ***Articles of Merger.*** CareFirst shall have executed and delivered the Articles of Merger in accordance with Section 2.2 hereof.

(e) ***No Material Adverse Effect.*** There shall not have occurred an event that has a CareFirst Material Adverse Effect.

(f) ***Agreement by Tax-Exempt Entities.*** Each of the Tax-Exempt Entities shall have: (i) voted the shares of CareFirst Common Stock to be received by such Tax-Exempt Entity in favor of the Agreement and the Merger, (ii) filed any notification with the DOJ and the FTC as required by the HSR Act and (iii) if required pursuant to Rule 145 under the Securities Act, executed and delivered a written agreement substantially in the form of Appendix G.